IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

Civil Revision No.849 of 1981

Date of Decision: 8.11.2006

Sheoji Ram

Petitioner

versus

Ganeshi Lal and others

Respondents

CORAM:- **HON'BLE MR. JUSTICE JASBIR SINGH**

Present: Shri J.R.Singla, Advocate for the petitioner
Shri L.N.Verma, Advocate for the respondents

Jasbir Singh, J. (Oral)

This revision petition has been filed laying challenge to the order dated 5.12.1974, passed by the trial Court, vide which, application of the petitioner, under Order 9 Rule 13 CPC, was dismissed. Challenge is also to the order dated 3.12.1980, vide which, appeal of the petitioner against order, referred to above, was dismissed.

It is apparent from the records that Ganeshi Lal and Bhagirath, (in short the plaintiffs), predecessor in interest of respondent Nos.(ia) to (ig) and (iia) to (iid), filed a suit for possession of land measuring 235 kanals 11 marlas, situated in village Rajpura against Sheoji Ram, the petitioner and mortgagees of land, in dispute, i.e. respondent Nos.3 to 5. It is not in dispute that the petitioner is real brother of the plaintiffs. It is also not in dispute that the land, in dispute, was mortgaged to respondent Nos.3 to 5, by

the petitioner for an amount of Rs.20,300/-. In that suit, it was specifically averred by the plaintiffs that they were owners of the property, in dispute, which has wrongly been mortgaged by the petitioner to the respondents, referred to above. It was further case of the plaintiffs that as the petitioner had been taken in adoption, by somebody else, he was not entitled to inherit property, left by their father. After notice, in their suit, when petitioner and others failed to put in appearance, an ex-parte judgment and decree, in favour of the plaintiffs, was passed on 2.11.1973. Thereafter, the plaintiffs also deposited the amount, in dispute, with the trial Court.

On 5.2.1974, the petitioner moved an application under Order 9 Rule 13 CPC with a prayer to set aside judgment and decree, in question. It was his case that he was not served and due to that, he could not appear before the trial Court. It was further stated that he had come to know about passing of the judgment only on 29.1.1974. Application was contested by the plaintiffs, both the parties led their evidence and on appraisal thereof, the trial Court dismissed that application on 5.12.1974. Thereafter, appeal filed by the petitioner was allowed on 17.5.1977. However, in revision, this Court, on 14.5.1979, set aside that order and remanded the matter to the appellate Court to decide it afresh. The appellate Court below, vide order dated 3.12.1980, dismissed appeal filed by the petitioner.

It is apparent from the records that while dismissing appeal of the petitioner, a categoric finding of fact has been given by the appellate Court that the petitioner was never served when the suit was pending before the trial Court. Issue No.2 reads thus:-

> *"Whether thee are sufficient grounds to set aside the exparte decree"*

After analyzing evidence on record, it was noticed that the petitioner was neither served through ordinary process nor by way of proclamation, decided above mentioned issue in his favour. Despite that the appeal was dismissed, by observing that the application, to set aside ex-parte judgment and decree was not filed within 30 days from the date of knowledge. It was further said that plea of the petitioner, that he had come to know about ex-parte judgment and decree on 29.1.1974, was not believable.

So far as finding on issue No.2 is concerned, the respondents – plaintiffs, did not challenge the same, by filing any revision etc. in this Court and as such, that finding had become final.

After hearing counsel for the parties, this Court feels that the opinion expressed by the appellate Court below, on issue No.1 is not justified. Once, it has come on record that the petitioner – defendant was not served, when the suit was going on and he had brought sufficient evidence on record to show that he came to know about passing of judgment and decree only on 29.1.1974, his plea was required to be accepted, especially when there is no contradictory evidence on record. To say that the petitioner acquired knowledge about passing of judgment and decree only on 29.1.1974, he had produced one Nand Lal (AW1). This witness has categorically stated that at the time of cremation of a family member, he had heard it from one of the plaintiffs that they had got judgment and decree passed in their favour. Testimony of this witness could not be shattered in cross-examination. Simply by raising some presumptions, the Court below has discarded his statement, by stating that he is closely related to the petitioner and further that he appears to be a young boy of 16-17 years only.

At the time of arguments, counsel for the respondents has failed to show any evidence to the contrary on record to prove that the petitioner had knowledge of the judgment and decree passed prior to 29.1.1974. Nothing has been brought to the notice of the Court in that regard. Once a finding has come on record that the petitioner was not served in the suit, then his averment that he came to know about judgment and decree passed only on 29.1.1974, in the absence of any evidence to the contrary, could not have been brushed aside by the Court below, merely on the basis of technicalities. It is not in dispute that the witness produced by the petitioner was related to both the parties. Under these circumstances, it can reasonably be presumed that the information supplied by the said witness was correct. Otherwise also, parties are closely related to each other being real brothers. The land, in dispute, is 235 kanals 11 marlas, which admittedly, was mortgaged by the petitioner to respondent Nos.3 to 5. A valuable right of the petitioner is going to be taken away from him without giving any opportunity of hearing, which, this Court feels, is not justified.

Rules and procedure are handmaid of justice to enhance the same and not to scuttle it. Their Lordships of Supreme Court in *Sardar Amarjit Singh Kalra (dead) by L.R.s v. Parmod Gupta (Smt.) (dead) by L.R.s and others, (2003) 3 SCC 272* in paragraph 26 of the judgment had opined as under:-

> *"Laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication merits of substantial rights of citizen under person, property and other laws. Procedure has always been viewed as the handmaid of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice."*

View extracted above, was reiterated by their Lordships of Supreme Court in *N.Balajit v. Virendra Singh and others (2004) 8 Supreme Court Cases 312*, wherein after noting ratio of the judgment, referred to above, in para 10 of the judgment, is was observed that the procedure would not be used to discourage the substantial and effective justice but would be so construed to advance the cause of justice.

In view of facts mentioned above, this revision petition is allowed, judgments passed by the trial Court and finding given by the appellate Court below on issue No.1 stands set aside. Consequently, application of the petitioner under Order 9 Rule 13 CPC stands allowed and ex-parte judgment and decree dated 2.11.1973 are set aside. Matter is remitted to the Trial Court, to decide the suit as per law.

Parties are directed to appear before the Court below on 18.12.2006.

In view of a fact that the matter is pending since 1973, the trial Court is directed to give special priority to the suit and try to dispose it of by giving three opportunities to each of the parties, to lead evidence, preferably within two years. No order as to costs.

Records of the court below and the copy of the order be sent to the trial Court forthwith.

November 08, 2006 **(Jasbir Singh)**
gk **Judge**